

FILED
January 11, 2006
U.S. Bankruptcy
Court
Santa Rosa, CA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

JOHN WILLIAM McINERNY,

No. 04-12758

Debtor(s).

Memorandum of Decision re Plan Confirmation

Chapter 13 debtor John McInerny has several credit card debts and one student loan. His plan calls for paying the student loan in full and the credit card holders nothing. The trustee objects to the separate classification.

A plan calling for preferred classification of a student loan because it is nondischargeable is not confirmable. *In re Sperna*, 173 B.R. 654, 660 (9th Cir. BAP 1994); *In re Labib-Kiyarash*, 271 B.R. 189, 196 (9th Cir. BAP 2001). The only possibility of specially classifying a student loan which has been recognized by the courts in this circuit is when the student loan is a long-term obligation and is paid outside the plan. *In re Labib-Kiyarash*, 271 B.R. at 195.

McInerny attempts to circumvent *Sperna* by classifying the student loan separately not because it is nondischargeable but because, unlike the credit cards, the student loan was made with no evaluation of the debtor's ability to pay. While such a classification might be considered where it encompassed both dischargeable and nondischargeable debts, in this case it is mere sophistry. Regardless of what McInerny says, his student loan is being separately classified because it is not dischargeable. The articulated reason for discrimination is made only to circumvent *Sperna*, and is therefore not made in

1 good faith.

2 For the foregoing reasons, the trustee's objection will be sustained and confirmation denied. The
3 trustee shall submit an appropriate form of order.

4 Dated: January 31, 2005

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6 Alan Jaroslovsky
7 U.S. Bankruptcy Judge
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